

House File 2387 - Introduced

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A BILL FOR

1 An Act relating to restitution for claims arising from members
2 of the general assembly committing unlawful and unfair or
3 discriminatory employment practices.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 669.21, subsection 2, Code 2018, is
2 amended by adding the following new paragraph:

3 NEW PARAGRAPH. *c.* The duty to indemnify and hold harmless
4 shall not apply if the employee is a member of the general
5 assembly and the claim arises from the employee committing
6 an unlawful and unfair or discriminatory employment practice
7 in violation of state or federal law. If the claim results
8 in an award by a court, the duty to compensate the plaintiff
9 shall apply, but the state shall have an absolute right to seek
10 restitution for the award and defendant's attorney fees.

11 Sec. 2. Section 669.22, Code 2018, is amended to read as
12 follows:

13 **669.22 Actions in federal court.**

14 The state shall defend any employee, and shall indemnify and
15 hold harmless an employee of the state in any action commenced
16 in federal court under 42 U.S.C. §1983 against the employee for
17 acts of the employee while acting in the scope of employment.
18 The duty to indemnify and hold harmless shall not apply and the
19 state shall be entitled to restitution from an employee if the
20 employee fails to cooperate in the investigation or defense of
21 the claim or demand, or if, in an action commenced by the state
22 against the employee, it is determined that the conduct of the
23 employee upon which the claim or demand was based constituted a
24 willful and wanton act or omission or malfeasance in office.
25 The duty to indemnify and hold harmless shall not apply if the
26 employee is a member of the general assembly and the claim
27 arises from the employee committing an unlawful and unfair or
28 discriminatory employment practice in violation of federal
29 law. If the claim results in an award by a court, the duty
30 to compensate the plaintiff shall apply, but the state shall
31 have an absolute right to seek restitution for the award and
32 defendant's attorney fees.

33

EXPLANATION

34 The inclusion of this explanation does not constitute agreement with
35 the explanation's substance by the members of the general assembly.

1 Under current law, the state has waived sovereign immunity
2 for certain tort claims, which are defined as monetary,
3 pursuant to the Iowa tort claims Act, Code chapter 669. Under
4 current law, if a state employee, defined to include a member
5 of the general assembly, is acting within the scope of the
6 employee's office or employment, the state will defend and will
7 indemnify and hold harmless the employee or the state will be
8 substituted as the defendant in place of the state employee.
9 Thus under current law, unless the employee is acting outside
10 the scope of the employee's office or employment, the employee
11 is not personally liable for torts.

12 In accordance with the Iowa civil rights Act, Code chapter
13 216, and federal law, it is unlawful for members of the general
14 assembly to engage in unfair or discriminatory employment
15 practices.

16 Under the bill, the state will defend, but will not indemnify
17 and hold harmless a defendant member of the general assembly
18 if the claims arise out of the member of the general assembly
19 committing unlawful and unfair or discriminatory employment
20 practices in violation of state or federal law. Under the
21 bill, if a member of the general assembly is accused of
22 employment discrimination and it results in an award by a
23 court, the state would pay the award but then would be entitled
24 to seek restitution for the award and defendant's attorney fees
25 from the offending state employee. The result would allow a
26 plaintiff to receive an award from the state, but would allow
27 the state to recover as much of the court-ordered award and
28 the cost of a defendant's attorney fees as possible from the
29 offending state employee.